136

No. ~~1500~~

In the

Supreme Court of the United States

THE TEXAS AND PACIFIC RAILWAY COMPANY, *et al.*,
Petitioners,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT IN CAUSE NO. 11663, ENTITLED "BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., APPELLANTS, VERSUS TEXAS & PACIFIC RAILWAY COMPANY, ET AL., APPELLEES", AND SUPPORTING BRIEF.

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No.....

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v.

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the Honorable, the Supreme Court of the United States:

Petitioners, The Texas and Pacific Railway Company and Guy A. Thompson, as Trustee of Missouri Pacific Railroad Company, Debtor, and not individually, respectfully request this Court to review on writ of certiorari the opinion and judgment of the United States Circuit Court of Appeals for the Fifth Circuit in Cause No. 11663, entitled "Brotherhood of Railroad Trainmen, et al., Appellants, versus Texas & Pacific Railway Company, et al., Appellees."

Another petition for a writ of certiorari in this cause has been filed by twenty-nine individual employees of The Texas and Pacific Railway Company, who were appellees in the Circuit Court and defendants in the District Court.

This case involves the construction and application of the Declaratory Judgment Act; it presents "important

questions affecting application and operation" of the Railway Labor Act, which should be resolved by this Court, *Elgin, J. & E. R. Co. v. Burley, 325 U. S. 711, 713;* and it raises issues and questions "of importance in the orderly administration of the Railway Labor Act", *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al., 15 Law Week 4146, 4147,* decided by this Court on January 13, 1947; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210; Steele v. Louisville & N. R. Co., et al., 323 U. S. 192, 194.* In each of those cases, this Court granted certiorari for the reason stated.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED

This is an action for a declaratory judgment brought by petitioners, The Texas and Pacific Railway Company and Guy A. Thompson, as Trustee of Missouri Pacific Railroad Company, Debtor, and not individually, against the Brotherhood of Railroad Trainmen, its Rapides Lodge No. 856, and twenty-nine individual employees of The Texas and Pacific Railway Company (Complaint, R. 2; Amendment, R. 123.)

Plaintiffs alleged (R. 4) and all defendants admitted (R. 103-104, 110) that the matter in controversy is between citizens of different states and exceeds the sum or value of $3,000.00, exclusive of interest and costs. Plaintiffs also alleged (R. 4) that the matter in controversy arises under the Railway Labor Act. This was denied by the individual defendants (R. 111) but admitted by the Brotherhood and

its Rapides Lodge, respondents herein, who denied that the District Court had jurisdiction (R. 103).

The Brotherhood of Railroad Trainmen is the accredited representative of the yardmen employed by petitioners in their joint yards at Alexandria, Louisiana (Complaint, R. 5; Admitted, R. 104, 111). The Brotherhood was a party to an agreement dated June 2, 1927, which provided for an assignment of crews at Alexandria so that yardmen and certain other employees of the two companies might perform their appropriate share of the joint work. Since June 2, 1927, the joint yard work at Alexandria has been performed, and is now being performed, in accordance with that agreement (Complaint, R. 5; Admitted, R. 104, 111).

In June 1944, officers of the Brotherhood of Railroad Trainmen requested petitioners to amend and interpret the agreement of June 2, 1927, so that yard employees of the Missouri Pacific would receive a larger proportion of the joint yard work at Alexandria and yard employees of the Texas and Pacific would receive a smaller proportion of that work (Complaint, R. 6; Admitted, R. 104, 111).

Learning of the Brotherhood's proposal, twenty-three of the yard employees of the Texas and Pacific, individual defendants below, and six other persons including one A. C. Bujol, instituted an action on June 5, 1944, in the 19th Judicial District Court for East Baton Rouge Parish, Louisiana, numbered 21,579 and commonly styled "A. C. Bujol, et al. v. Missouri Pacific Railroad Company, et al." for the purpose of enjoining the Brotherhood of Railroad Trainmen, Missouri Pacific Railroad Company, and The Texas and Pacific Railway Company from making any

changes in the agreement of June 2, 1927 (Complaint, R. 7-8; Exhibit D to Complaint, R. 24-44; Admitted by Stipulation, R. 58.)

Although tacitly admitting that the Brotherhood of Railroad Trainmen is the accredited representative of the yardmen under the Railway Labor Act, plaintiffs in the Bujol case contended that the officers of the Brotherhood were without authority to make the proposed changes because (1) they were acting upon an invalid decision of the Board of Appeals of the Brotherhood, (2) the Board of Appeals had no jurisdiction of the controversy under the constitution of the Brotherhood, (3) plaintiffs were denied the right of appeal within the Brotherhood in violation of its constitution and by-laws, and (4) the proposal was the result of a political deal and collusion between officers, agents and representatives of the Brotherhood. It was also alleged that the invalid decision of the Board of Appeals, if given effect through the proposed changes in the agreement of June 2, 1927, would prejudice plaintiffs individually and collectively as to their working hours, rates of pay, working conditions, and seniority rights, including their right to earn a living (Complaint, R. 7; Exhibit D to Complaint, R. 24-44; Admitted by Stipulation, R. 58).

On June 26, 1944, one of the attorneys for the plaintiffs in the Bujol case addressed a letter to an agent of The Texas and Pacific Railway Company, one of the petitioners herein, reasserting the rights of those plaintiffs under the

agreement of June 2, 1927, declaring an intention to further prosecute their cause, and stating:

> "The purpose of this letter is to advise that petitioners intend, individually and collectively, to invoke all legal remedies available to them to enforce specific performance and legal adherence to the said contract, and in the alternative to sue in damages if the said contract is changed under said illegal decree" (Complaint, R. 8; Exhibit F to Complaint, R. 49-51; Admitted by Stipulation, R. 58).

By judgment rendered July 6, 1944, the Louisiana Court vacated a temporary restraining order previously issued and dismissed the suit because the Brotherhood of Railroad Trainmen, a necessary party, had not been properly served and was not before the Court (Complaint, R. 8; Exhibit E to Complaint, R. 45-48; Stipulation, R. 57-58). Following entry of the judgment, the attorneys for the plaintiffs addressed another letter to the agent of The Texas and Pacific Railway Company, stating that appeals would be prosecuted to the Supreme Court of Louisiana, and declaring the purpose of plaintiffs,—

> "to take any and all action available in this suit to enforce specific performance and legal adherence to the said contract (of June 2, 1927), and in the alternative to sue in damages if the said contract is changed under the said illegal decree of the Brotherhood of Railroad Trainmen" (Complaint, R. 8-9; Exhibit G to Complaint, R. 51-52; Admitted by Stipulation, R. 58).

Notwithstanding the charge of the individual employees, defendants below, that the officers of the Brotherhood were proceeding in violation of its constitution and by-laws, and despite the threats of those employees to prosecute damage

suits against petitioners if they changed the contract of June 2, 1927, the Brotherhood, standing on its asserted right as bargaining agent, persisted in its demand that such changes be made, asserting that petitioners are required by the Railway Labor Act to negotiate with the Brotherhood irrespective of the claimed lack of authority of the bargaining agent, or suffer a heavy penalty for their wilful failure so to do (Complaint, R. 9; Answers of the Brotherhood, R. 105, 121; Stipulation, R. 183-184).

Placed in this position of peril and insecurity, petitioners brought this action for declaratory judgment against the Brotherhood of Railroad Trainmen, its Rapides Lodge No. 856, and the twenty-nine complaining employees of The Texas and Pacific Railway Company, in an effort to ascertain (1) whether or not petitioners are required by the Railway Labor Act to negotiate and, if possible, to reach an agreement with the Brotherhood as to the changes desired by it in the agreement of June 2, 1927, notwithstanding the charges of the individual employees; and (2), if petitioners so negotiate and agree, whether or not they are liable for injuries or damages which may be sustained by any of the twenty-nine individual defendants by reason of such negotiation and agreement. Specifically, petitioners prayed that the Court declare:

> "(1) That plaintiffs are not required by law either to amend or to interpret said contract of June 2, 1927, as desired by the Brotherhood of Railroad Trainmen;
>
> "(2) That plaintiffs are not required by law to confer, negotiate, or bargain with any officer, agent or representative of the Brotherhood of Railroad Trainmen, concerning desire so to amend or interpret said contract of June 2, 1927, while the validity of said

Brotherhood's actions and/or the authority of its officers, agents, or representatives so to amend or interpret said contract are being challenged on the grounds and in the manner set forth in the foregoing bill of complaint;

"(3) That neither the Brotherhood of Railroad Trainmen or any person represented by it has or shall have any claim, demand, right, or cause of action whatsoever against plaintiffs, or either of them, for their refusal, jointly or severally, to amend or interpret said contract of June 2, 1927, as desired by the Brotherhood of Railroad Trainmen, or for their refusal, jointly or severally, to confer, negotiate or bargain with any officer, agent or representative of the Brotherhood of Railroad Trainmen, concerning its desire so to amend or interpret said contract of June 2, 1927, while the validity of said Brotherhood's actions and/or the authority of its officers, agents and representatives so to amend or interpret said contract are being challenged on the grounds and in the manner set forth herein.

"(4) In the alternative and in the event that the Court should hold that plaintiffs are required by law to amend and/or interpret said contract of June 2, 1927, as desired by the Brotherhood of Railroad Trainmen, or should the Court hold that plaintiffs are required by law to confer, negotiate or bargain with officers, agents and representatives of the Brotherhood of Railroad Trainmen, concerning its desire so to amend or interpret said contract of June 2, 1927, while the validity of the Brotherhood's actions and/or the authority of its officers, agents, and representatives so to amend or interpret said contract are being challenged on the grounds and in the manner hereinabove set forth, then, and in either of those events, plaintiffs pray the Court to declare that plaintiffs, by so amending and/or interpreting said contract, or by so conferring, negotiating, or bargaining with reference to said amendment or interpretation, are not and shall not become liable in any manner to the individual de-

> fendants herein, or to any of them, or to any other person, for any injury or damage which they or any of them may sustain by reason of said amendment, interpretation, conference, negotiation or bargaining" (Amendment to Complaint, R. 124-126).

The twenty-nine individual defendants filed motions to dismiss (R. 54-57), not here in issue, which were overruled (R. 101-102) after opinion (R. 62, 65-76) by the District Court.

The Brotherhood of Railroad Trainmen and its Rapides Lodge No. 856 filed a motion to dismiss for lack of jurisdiction over the subject matter, asserting that:

> "The matter in controversy herein is not one of a justiciable nature, and consequently, not subject to judicial review, it being a labor dispute under the Railway Labor Act, 45 U. S. C. A. sec. 151 et seq., and one over which Congress has foreclosed resort to the Courts for enforcement of the claims asserted by plaintiffs" (R. 53).

This motion was overruled (R. 101-102) following an exhaustive opinion (R. 62, 76-101) by the District Court. After a painstaking analysis (R. 76-101), the District Court concluded (1) "that this controversy is not such 'a labor dispute' as the Railway Labor Act relegates to any national or regional board, nor does it come within the purview of the National Mediation Board or any other administrative agency provided by the Railway Labor Act" (R. 86); (2) that this case is not controlled by *General Committee of Adjustment of Brotherhood of Locomotive Engineers for Missouri-Kansas-Texas R. R. v. Missouri-Kansas-Texas R. Co., et al., 320 U. S. 323* or by *Switchmen's*

Union of North America v. National Mediation Board, 320 U. S. 297 (R. 94); (3) that "the general jurisdiction of the Federal Courts is applicable, even to a 'labor dispute'—where the determination of that dispute is not otherwise provided for by the Railway Labor Act" (R. 99); (4) that this case is controlled by *Steele v. Louisville & N. R. Co., et al., 323 U. S. 192*, and by *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210* (R. 94-101); and (5) "We are so satisfied from the facts that the action for a declaratory judgment is permitted that we shall not discuss the question, nor cite the jurisprudence" (R. 83).

After a trial upon the merits, the District Court found that the order of the Board of Appeals of the Brotherhood of Railroad Trainmen (R. 185-194), under which the officers of the Brotherhood were proceeding in their efforts to change the agreement of June 2, 1927, was null and void because the Board of Appeals, under the constitution of the Brotherhood, had no jurisdiction of the controversy (R. 332, 335, 337, 338), and that the individual employees of The Texas and Pacific Railway Company, defendants below, "have been denied a right under the Constitution of the Brotherhood" (R. 338). Holding that these facts bring this case within the exception to the general rule that Courts will not interfere in the internal affairs of a labor union, the District Court recognized the legal principle that Courts will protect a union member's seniority rights " 'against action by the union which is arbitrary, fraudulent, illegal, or in excess of the union's powers or those of the officers or tribunals through which it acts' " (R. 330-

331), and that " 'seniority rights secured to members of a brotherhood by its rules and its contract with a railroad will be respected and protected by the Courts against prejudicial change by a tribunal of the brotherhood acting in excess of powers conferred upon it by the brotherhood's constitution' " (R. 331). Accordingly, the District Court decreed, among other things,—

> "that the action taken by the Brotherhood of Railroad Trainmen, its officers, agents or representatives, to amend or interpret said contract of June 2, 1927, is contrary to and in violation of the constitution and by-laws of said Brotherhood and is null and void" (R. 340); and
>
> "that under the existing circumstances neither of said plaintiffs is required by law to confer, negotiate, bargain or treat with the Brotherhood of Railroad Trainmen, its officers, agents or representatives, concerning its or their desire to amend or interpret said contract of June 2, 1927" (R. 340).

Without reaching the merits (R. 355), the Circuit Court reversed the judgment of the District Court and remanded the cause with directions to dismiss the complaint (R. 360) because "the complaint presented no justiciable controversy" and "it was fundamental error not to grant the motion to dismiss" (R. 355) "in light of the controlling authorities" (R. 358), namely: *Brotherhood of Locomotive Engineers v. M. K. & T. R. Co., 320 U. S. 323; Switchmen's Union v. National Mediation, 320 U. S. 297; Brotherhood of Railroad Trainmen v. Toledo, 321 U. S. 50;* and the decision of the Circuit Court in *Bradley Lumber Co. v. N. L. R. B., 84 Fed. (2) 97* (R. 353-354). Stating its reasons for these conclusions "in the briefest compass" (R.

prove a justiciable controversy between themselves and the twenty-nine individual defendants; hence, at most, the Circuit Court should have limited its order of dismissal to the cause of action against the Brotherhood of Railroad Trainmen and its Rapides Lodge No. 856, and the Circuit Court should have remanded this cause to the District Court with directions to enter a declaratory judgment against the twenty-nine individual defendants, in accordance with its opinon.

JURISDICTIONAL STATEMENT

This Court is authorized by Section 240 of the Judicial Code, as amended, (36 Stat. 1157, 43 Stat. 938; 28 U. S. C. A. sec. 347) to review on certiorari the judgment of the Circuit Court. That statute reads in part as follows:

> "In any case, civil or criminal, in a circuit court of appeals, * * * it shall be competent for the Supreme Court of the United States, upon petition of any party thereto, * * * to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal" [28 U. S. C. A. sec. 347(a)].

The judgment of the Circuit Court was rendered on February 5, 1947. A timely petition for rehearing (R. 365-371) was denied by that Court on March 19, 1947, and this petition for a writ of certiorari will be filed "within three months" thereafter, as required by Section 8 of the Act approved February 13, 1925 (43 Stat. 940; 28 U. S. C. A. sec. 350) as construed by this Court in *Gypsy Oil Company v. Leo Bennett Escoe, a Minor, by O. W. Steph-*

ens, Guardian, 275 U. S. 498-499, and *Department of Banking of Nebraska, Receiver v. Pink, Superintendent of Insurance of the State of New York, 317 U. S. 264, 266.*

As a part of this jurisdictional statement, petitioners adopt the foregoing summary and short statement of the matters involved (pages 2-12). As therein shown, this is an action for a declaratory judgment; it is a controversy between citizens of different states; it exceeds the sum or value of $3,000.00 exclusive of interest and costs; it arises under a law of the United States [Judicial Code, sec. 24; 36 Stat. 1091; 28 U. S. C. A. sec. 41(1)]; and it arises under a law regulating commerce [Judicial Code, sec. 24, par. 8, as amended; 36 Stat. 1092, 38 Stat. 219; 28 U. S. C. A. sec. 41(8)].

This case presents "important questions affecting application and operation" of the Railway Labor Act (48 Stat. 1186; 45 U. S. C. A. sec. 152), which should be resolved by this Court, *Elgin, J. & E. R. Co. v. Burley, 325 U. S. 711, 713;* and it raises issues and questions "of importance in the orderly administration of the Railway Labor Act", *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al., 15 Law Week 4146, 4147,* decided by this Court on January 13, 1947; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210; Steele v. Louisville & N. R. Co., et al., 323 U. S. 192, 194.* In each of those cases, this Court granted certiorari for the reason stated.

The Circuit Court misinterpreted and misapplied the decisions of this Court in *General Committee v. M.-K.-T. R.*

Co., 320 U. S. 323; Switchmen's Union v. Board, 320 U
297; and *Brotherhood of Railroad Trainmen v. Toledo*
& W. R. Co., 321 U. S. 50.

The Circuit Court misinterpreted and refused to ap
and its opinion and judgment are in conflict with, the
cisions of this Court in *The Order of Railway Conduc*
of America, et al. v. O. E. Swan, et al., 15 Law Week 4
decided by this Court on January 13, 1947; *Elgin, J. &*
R. Co. v. Burley, 325 U. S. 711; Tunstall v. Brotherhoo
Locomotive Firemen and Enginemen, 323 U. S. 210;
Steele v. Louisville & N. R. Co., et al., 323 U. S. 192.

The Circuit Court refused to apply and give effec
the Declaratory Judgment Act (Judicial Code, sec. 2
as amended; 48 Stat. 955, 49 Stat. 1027; 28 U. S. C
sec. 400) as construed and applied by this Court in *A*
Life Ins. Co. v. Haworth, 300 U. S. 227, 239-241; Cu
v. Wallace, 306 U. S. 1, 9; Maryland Casualty Co. v. Pa
Co., 312 U. S. 270, 272-274; Altvater v. Freeman, 31
S. 359, 363-365; and *Tennessee Coal Co. v. Muscoda L*
321 U. S. 590, 592-593, and the opinion and judgmer
the Circuit Court are in conflict with those decisions.

QUESTIONS PRESENTED

The following questions are presented by the record
opinions in this case:

1. Are officers of a labor union, a bargaining a
under the Railway Labor Act, required to comply wit
union's constitution and by-laws as a condition prec
to their right under the Act to negotiate contracts w
railroad company?

2. Is a railroad company required by the Railway Labor Act to confer, negotiate, bargain or treat with, and if possible to reach an agreement with, officers of a labor union, a bargaining agent under the Act, after being notified by employees who would be injuriously affected that the officers of the union are proceeding in violation of its constitution and by-laws and that such employees will sue the railroad company for damages should such agreement be made?

3. Does the Railway Labor Act require a railroad company to confer, negotiate, bargain or treat with, and if possible to reach an agreement with, officers of a labor union, a bargaining agent under the Act, after a United States District Court has found that such officers are proceeding in violation of the union's constitution and by-laws and that employees who would be injuriously affected have been denied a right under the union's constitution?

4. If the answer to question 2 or 3 is "Yes", does the railroad company become liable in damages to its employees who are injured by such conferring, negotiating, bargaining, treating, and the agreement resulting therefrom?

5. If the answer to question 2 or 3 is "No", is the railroad company subject to any penalty under the Railway Labor Act, and is it liable in damages to the labor union or to any person represented by it, or to any employee who might be injured by the failure or refusal of the railroad company to confer, negotiate, bargain or treat with, and if possible to reach an agreement with, the officers of the labor union?

6. Does a District Court of the United States have jurisdiction and authority to answer questions numbered 1 to 5, inclusive, and to enter a judgment declaring the respective rights, obligations, and legal relations of the parties in an action for a declaratory judgment between citizens of different states where the amount in controversy exceeds the sum or value of $3,000.00 exclusive of interest and costs?

7. Did the District Court have jurisdiction of this cause of action and was it authorized, as it did, to enter a declaratory judgment?

8. Does the complaint and record in this case disclose a justiciable controversy between petitioners and defendants Brotherhood of Railroad Trainmen and its Rapides Lodge No. 856?

9. Does the complaint and record in this case disclose a justiciable controversy between petitioners and the twenty-nine individual defendants?

10. Is the decision in this case controlled by *Brotherhood of Locomotive Engineers v. M.-K.-T. R. Co., 320 U. S. 323; Switchmen's Union v. National Mediation, 320 U. S. 297; Brotherhood of Railroad Trainmen v. Toledo, 321 U. S. 50;* and *Bradley Lumber Co. v. N. L. R. B., 84 Fed. (2d) 97*, as stated by the Circuit Court of Appeals?

11. Is this case controlled by the principles announced by this Court in *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al., 15 Law Week 4146*, decided January 13, 1947; *Elgin, J. & E. R. Co. v. Burley,*

325 U. S. 711; Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210; and *Steele v. Louisville & N. R. Co., et al., 323 U. S. 192?*

12. Did the Circuit Court err in failing and refusing to apply and give effect to the Declaratory Judgment Act (Judicial Code. sec. 274d, as amended; 48 Stat. 955, 49 Stat. 1027; 28 U. S. C. A. sec. 400) as construed and applied by this Court in *Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 239-241; Currin v. Wallace, 306 U. S. 1, 9; Maryland Casualty Co. v. Pacific Co., 312 U. S. 270, 272-274; Altvater v. Freeman, 319 U. S. 359, 363-365;* and *Tennessee Coal Co. v. Muscoda Local, 321 U. S. 590, 592-593?*

13. Did the Circuit Court err in ordering a dismissal of the complaint on the ground that petitioners neither alleged nor proved a justiciable controversy between themselves and the Brotherhood of Railroad Trainmen and its Rapides Lodge No. 856?

14. Having based its order of dismissal on the failure of petitioners to allege or prove a justiciable controversy between themselves and the Brotherhood of Railroad Trainmen and its Rapides Lodge No. 856 (R. 358), did the Circuit Court err in ordering a dismissal of the complaint as to the cause of action asserted by petitioners against the twenty-nine individual defendants?

15. Having declared that petitioners are under a statutory duty to negotiate with the Brotherhood of Railroad Trainmen and that neither negotiation nor agreement with it can therefore make petitioners liable to the individual

defendants (R. 359), did the Circuit Court err in not entering, or in not remanding this cause to the District Court with directions to enter, a judgment in accordance with that declaration?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

Petitioners respectfully submit that this application for a writ of certiorari should be granted for each of the following reasons:

1. This case presents "important questions affecting application and operation" of the Railway Labor Act which should be resolved by this Court, *Elgin, J. & E. R. Co. v. Burley, 325 U. S. 711, 713.*

2. The issues and questions raised by this case are "of importance in the orderly administration of the Railway Labor Act", *The Order of Railway Conductors of America, et al., v. O. E. Swan, et al., 15 Law Week 4146, 4147,* decided by this Court on January 13, 1947; *Steele v. Louisville & N. R. Co., 323 U. S. 192, 194; Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210.*

3. It is now a matter of common knowledge that employees on numerous railroads are challenging the right of officers of labor unions, accredited respresentatives under the Railway Labor Act, to make, amend or terminate contracts with railroad companies on the ground that such officers are acting in violation of the unions' constitutions and by-laws. In many instances, such as this, those employees are threatening to bring damage suits against the

railroad companies if they make, amend or terminate such contracts as requested by the officers of the unions. On the other hand, the union officers are insisting that the railroad companies are required by the Railway Labor Act to confer, negotiate, bargain or treat with them, and if possible reach an agreement, notwithstanding such charges by the individual members of the union, or suffer penalties for their wilfull failure so to do. This creates confusion, doubt, uncertainty and delay in the orderly administration of the Railway Labor Act and places the railroad companies in positions of peril and insecurity. A writ of certiorari should be granted in this case so that this Court may declare the respective rights, obligations, and legal relations of the parties under the Act in respect to these matters and forever set such questions at rest.

4. The Circuit Court misinterpreted and misapplied the decisions of this Court in *General Committee v. M.-K.-T. R. Co., 320 U. S. 323; Switchmen's Union v. Board, 320 U. S. 297;* and *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co., 321 U. S. 50.*

5. The Circuit Court misinterpreted and refused to apply, and its opinion and judgment are in conflict with, the decisions of this Court in *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al., 15 Law Week, 4146,* decided by this Court on January 13, 1947; *Elgin, J. & E. R. Co. v. Burley, 325 U. S. 711; Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210;* and *Steele v. Louisville & N. R. Co., et al., 323 U. S. 192.*

6. The Circuit Court refused to apply and give effect to the Declaratory Judgment Act (Judicial Code, sec. 274d, as amended; 48 Stat. 955, 49 Stat. 1027; 28 U. S. C. A. sec. 400) as construed and applied by this Court in *Aetna Life Insurance Co. v. Haworth, 300 U. S. 227, 239-241; Currin v. Wallace, 306 U. S. 1, 9; Maryland Casualty Co. v. Pacific Co., 312 U. S. 270, 272-274; Altvater v. Freeman, 319 U. S. 359, 363-365;* and *Tennessee Coal Co. v. Muscoda Local, 321 U. S. 590, 592-593;* and the opinion and judgment of the Circuit Court are in conflict with those decisions.

7. The Circuit Court treated this action solely as one between petitioners and the Brotherhood of Railroad Trainmen and its Rapides Lodge No. 856, finding that no justiciable controversy was alleged or proved between petitioners and those appealing defendants (R. 358). Without any finding to support its action, the Circuit Court erroneously ordered a dismissal of the complaint against the twenty-nine individual defendants. Certiorari should be granted to correct this error.

WHEREFORE, petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record and proceedings of said Circuit Court in the case on its docket numbered 11663, entitled "Brotherhood of Railroad Trainmen, et al., Appellants, versus Texas & Pacific Railway Company, et al., Appellees", to the end that said cause may be reviewed and determined by this Court as provided by the Statutes

of the United States; that the judgment of said Circuit Court be reversed; and for such other and further relief as this Court may deem proper.

Dated June 14, 1947.

Respectfully submitted,

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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the Honorable, the Supreme Court of the United States:

As permitted by Rule 38, petitioners attach this sup-rting brief to their petition for writ of certiorari.

OPINIONS IN THE COURTS BELOW

The opinion of the District Court on motions to dismiss . 62-101) is reported in 60 F. Supp. 263-281.

The final opinion of the District Court, on the merits of e case (R. 329-339), is reported in 63 F. Supp. 640-644.

The opinion of the Circuit Court (R. 349-359) is re-rted in 159 F. 2d 822-828 (Pamphlet Advance Sheet No. dated April 14, 1947).

GROUNDS OF JURISDICTION

Petitioners adopt, as their grounds of jurisdiction, the jurisdictional statement on pages 12 to 14, inclusive, of the foregoing petition for a writ of certiorari.

STATEMENT OF THE CASE

Petitioners adopt, as their statement of the case, the summary and short statement of the matter involved on pages 2 to 12, inclusive, of the foregoing petition for a writ of certiorari.

SPECIFICATIONS OF ASSIGNED ERRORS

Petitioners respectfully submit that the Circuit Court committed the following errors:

1. The Circuit Court erred in entering a judgment (R. 360) reversing the judgment of the District Court and remanding this cause with directions to dismiss the complaint.

2. The Circuit Court erred in entering a judgment (R. 360) which directed the District Court to dismiss the complaint against the twenty-nine individual defendants.

3. The Circuit Court erred in holding "that the complaint presented no justiciable controversy; that it was fundamental error not to grant the motion to dismiss; and that the judgment must be reversed and the cause remanded with directions to dismiss the suit" (R. 355).

4. The Circuit Court erred in holding that petitioners, plaintiffs below, neither alleged nor proved a justiciable controversy between themselves and the Brotherhood of

Railroad Trainmen and its Rapides Lodge No. 856 (R. 358).

5. The Circuit Court erred in failing or refusing to find and hold that petitioners both alleged and proved a justiciable controversy between themselves and the Brotherhood of Railroad Trainmen and its Rapides Lodge No. 856.

6. The Circuit Court erred in failing or refusing to find and hold that petitioners both alleged and proved a justiciable controversy between themselves and the twenty-nine individual defendants.

7. The Circuit Court erred in holding that petitioners, plaintiffs below, "do not allege any fact which shows that they are justiciably concerned in the internal dispute between the members and the Brotherhood" (R. 358-359).

8. The Circuit Court erred in holding, in effect, that this case can and should be settled under and in accordance with the Railway Labor Act.

9. The Circuit Court misinterpreted and misapplied the decisions of this Court in *General Committee v. M.-K.-T. R. Co., 320 U. S. 323; Switchmen's Union v. Board, 320 U. S. 297;* and *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co., 321 U. S. 50;* and the Circuit Court erred in holding that "this case comes squarely under the general rule" announced in those cases (R. 356).

10. The Circuit Court misinterpreted and refused to apply the decisions of this Court in *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al., 15 Law Week 4146,* decided by this Court on January 13,

ously refused to give effect to the Declaratory Judgment Act which is intended to afford relief against peril and insecurity, *Altvater v. Freeman, 319 U. S. 359, 365,* to remove uncertainty, to avoid multiplicity of suits, to afford a speedy and inexpensive method of adjudication, to avoid accrual of avoidable damages, and to afford the parties an early adjudication without waiting until their adversaries see fit to begin suit after damages have accrued.

14. Having declared that "the carriers (petitioners) are under a statutory duty to negotiate with the Brotherhood" and that "neither negotiation nor an agreement with them can therefore make the carriers liable" to the twenty-nine individual defendants (R. 359), the Circuit Court erred in failing or refusing to enter a declaratory judgment to that effect.

SUMMARY OF ARGUMENT

These propositions are advanced in the argument which follows:

1. Jurisdiction of this cause is not excluded by the Railway Labor Act, and the cases cited by the Circuit Court do not support its conclusion that the instant case presents no "justiciable controversy".

2. The Courts will interpret the Railway Labor Act and will determine whether or not Congress, by its command that railroad companies confer, negotiate, bargain or treat with, and if possible reach an agreement with, the accredited representative of employees, intended that a railroad company do so after being put on notice by its employees who would be injured thereby that the officers of an accred-

ited union are proceeding in violation of the union's constitution and by-laws and that such injured employees will sue said railroad company for damages should such agreement be made. And the Courts will determine whether or not such liability exists.

3. Petitioners have no administrative remedy. Neither the National Railroad Adjustment Board nor the National Mediation Board nor any other agency is authorized by the Railway Labor Act to entertain or decide the questions presented in preceding paragraph 2 or to make any award or order in respect thereto.

4. Courts will determine whether a labor union is proceeding lawfully under the Railway Labor Act and Courts will invalidate acts of the union and its officers which are in violation of the constitution and by-laws of the union.

5. Petitioners are entitled to a declaratory judgment. The Declaratory Judgment Act was intended to afford relief in cases such as this and avoid the procedure prescribed by the Circuit Court.

ARGUMENT

The Circuit Court ordered a dismissal of the complaint (R. 360) after finding that "this case comes squarely under the general rule" stated in the cases "relied on by appellants" (R. 356), namely: *Brotherhood of Locomotive Engineers v. M.-K.-T. R. Co., 320 U. S. 323; Switchmen's Union v. National Mediation, 320 U. S. 297; Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co., 321 U. S. 50;* and *Bradley Lumber Co. v. N. L. R. B., 84 Fed. (2) 97.*

In light of these "controlling authorities" (R. 358), the Circuit Court concluded that "the complaint presented no justiciable controversy" (R. 355), and that "no justiciable controversy between the railroads and the appealing defendants is alleged or proven" (R. 358).

Had the Circuit Court not felt bound by those decisions, it doubtless would have concluded, as it did in *Oil Workers Inter. Union, etc. v. Texoma Nat. Gas Co., 146 Fed. (2) 62*, certiorari denied, *325 U. S. 872*, rehearing denied, *325 U. S. 893*, that a declaratory judgment action was proper. In that case, the Circuit Court said:

> "The Declaratory Judgment Act should be liberally construed, Mississippi Power & Light Co. v. City of Jackson, 5 Cir., 116 F. 2d 924, certiorari denied 312 U. S. 698, 61 S. Ct. 741, 85 L. Ed. 1133; and where a justiciable controversy exists between parties who are citizens of different states with regard to rights having a value in excess of $3,000, as here, the United States District Courts are vested with jurisdiction. The court below found that the controversy between the parties related to their legal rights and liabilities under their contract; that the parties had taken adverse positions with respect to their respective rights and obligations; that, therefore, a justiciable controversy existed, appropriate for judicial determination under the Declaratory Judgment Act. We agree. An employer may establish the seniority rights of an employee in dispute with other employees, as well as general rights which their contract relationship establishes, without waiting to be sued for breach or for damages or for specific performance, and thus secure an 'interpretation of the contract during its actual operation' and stabilize an 'uncertain and disputed relation'" (page 65).

The cases cited by the Circuit Court are not controlling and they do not sustain its dismissal order.

In *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co., 321 U. S. 50*, this Court held that the federal courts could not enjoin strike violence on the Toledo, Peoria & Western Railroad because that company had refused to arbitrate disputes relating to rates of pay and working conditions, as provided in the Railway Labor Act. No such issue is involved in this case.

In *Bradley Lumber Co. v. National Labor Relations Board, 84 Fed. (2) 97*, it was held that a federal court could not enjoin the taking of testimony by a Regional Director for the National Labor Relations Board, and that the Declaratory Judgment Act conferred no greater power "to stop or interfere with administrative proceedings" or extend equity jurisdiction to "controversies which have not yet reached the judicial stage". No such issues are involved in the instant case.

This Court has definitely limited the scope of *General Committee v. M.-K.-T. R. Co., 320 U. S. 323*, and *Switchmen's Union v. Board, 320 U. S. 297*, to "a jurisdictional dispute, determinable under the administrative scheme set up by the (Railway Labor) Act * * * or restricted by the Act to voluntary settlement by recourse to the traditional implements of mediation, conciliation and arbitration", to questions of "who is entitled to represent the craft, or who are members of it, issues which have been relegated for settlement to the Mediation Board", to "differences as to the interpretation of the contract which by the Act are

committed to the jurisdiction of the Railroad Adjustment Board", *Steele v. Louisville & N. R. Co., 323 U. S. 192, 204-205; Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210, 213;* and to "an administrative determination which Congress has made final and beyond the realm of judicial scrutiny", *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al., 15 Law Week 4146, 4147*, decided January 13, 1947. None of those elements are present in the case now before this Court. And, certainly those cases do not preclude judicial review where, as here, "the issue is primarily one of statutory interpretation", "the problem is to determine what Congress meant * * *", *Swan case*, supra; and the Courts are called upon to declare whether or not petitioners, by complying with the Court's interpretation of the Act, become liable in damages to those who may be injured thereby. These are questions essentially for the Courts:

> "The judicial department of every government is the rightful expositor of its laws * * *", *Bank of Hamilton v. Dudley, 2 Peters 317, 336; 27 U. S. 492, 524.*
>
> "* * * the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government", *Elmendorf v. Taylor, 10 Wheaton 67, 70; 23 U. S. 152, 159.*
>
> "The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said", *United States v. American Trucking Ass'ns, 310 U. S. 534, 544.*

Only the Courts can say whether or not Congress, by its command that railroad companies confer, negotiate, bargain or treat with, and if possible reach an agreement with, the accredited representatives of employees under the Railway Labor Act (48 Stat. 1186; 45 U. S. C. A. sec. 152), intended that a railroad company should do so after being put on notice by its employees who would be injured thereby that the officers of an accredited union representative are proceeding in violation of the union's constitution and by-laws and that such injured employees will sue said railroad company for damages should such agreement be made. And only the Courts can say whether or not such liability exists.

There is nothing in the Railway Labor Act which authorizes the National Railroad Adjustment Board, or the National Mediation Board, or any other administrative agency, to pass upon these questions, or to bind the parties if they did. According to its purpose clause, the Railway Labor Act is intended to provide for the prompt and orderly settlement of "all disputes concerning rates of pay, rules, or working conditions" and "all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions" (48 Stat. 1186; 45 U. S. C. A. sec. 151a); and the jurisdiction of the National Railroad Adjustment Board and the National Mediation Board is limited to such disputes between a railroad company and its employees [48 Stat. 1189, 1195; 45 U. S. C. A. sec. 153(i) and sec. 155 First]. No such dispute is present in the instant case. The questions at issue are the authority of the bargaining agent

and the liability, if any, of the railroad company resulting from its agreements with that agent.

The authority of the bargaining agent was at issue in *Steele v. Louisville & N. R. Co., et al., 323 U. S. 192; Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210;* and *Elgin, J. & E. R. Co. v. Burley, 325 U. S. 711;* and in each of those cases this Court granted certiorari.

In the *Steele case*, the Supreme Court of Alabama held that the railroad company was required to make the agreement there under attack because the Railway Labor Act "places a mandatory duty on the Railroad to treat with the Brotherhood as the exclusive representative of the employees in a craft" and "imposes heavy criminal penalties for willful failure to comply with its command" (323 U. S. 197). Disagreeing, this Court recognized that the Act creates "the relationship of principal and agent between the members of the craft and the Brotherhood" (323 U. S. 198), and invalidated the agreement because the Brotherhood, in violation of its statutory duty, had contracted against a minority whom it was required to represent (323 U. S. 198-203). The *Tunstall case* is to the same effect (323 U. S. 211-212).

In the *Burley case*, certain employees of the Elgin, J. & E. Ry. Co., among other things, challenged the authority of a union representative under the Railway Labor Act and its officers to release their individual claims or submit

them to the National Railroad Adjustment Board (325 U. S. 718). As stated by this Court:

> "They relied upon provisions of the Brotherhood's constitution and rules, of which the carrier was alleged to have knowledge, as forbidding union officials to release individual claims or to submit them to the Board 'without specific authority to do so granted by the individual members themselves'; and denied that such authority in either respect had been given" (325 U. S. 718).

Holding that "the collective agent's power to act in the various stages of the statutory procedures is part of those procedures and necessarily is related to them in function, scope and purpose" (325 U. S. 728), this Court remanded the cause for a determination of the "crucial issue" of whether the employees "had authorized the Brotherhood in any legally sufficient manner to represent them" (325 U. S. 748). On rehearing, this Court adhered to its former decision and reëmphasized the right of the complaining employees to challenge the lack of authority of the bargaining agent in the courts—"the forum where such issues properly are triable" (327 U. S. 667).

In addition to the *Steele*, *Tunstall*, and *Burley cases*, petitioners are confronted with the principles of law, quoted by the District Court (R. 330-331), to the effect that, contrary to the general rule that Courts will not interfere with the internal affairs of a labor union, they will protect a union member's seniority rights against "action by the union which is arbitrary, fraudulent, illegal, or in excess of the union's powers or those of the officers or tribunals through which it acts", and that "the seniority rights se-

cured to members of a brotherhood by its rules and its contracts with a railroad will be respected and protected by the Courts against prejudicial change by a tribunal of the brotherhood acting in excess of powers conferred upon it by the brotherhood's constitution", *142 A. L. R. 1067.*

It is clear from the foregoing authorities and the facts in this case that petitioners are placed in a position of "peril and insecurity" against which the Declaratory Judgment Act should "afford relief", *Altvater v. Freeman, 319 U. S. 350, 365.* The Act was so used in the *Altvater case* and it served the same purpose in *Aetna Life Ins. Co. v. Haworth, 300 U. S. 227; Currin v. Wallace, 306 U. S. 1; Maryland Casualty Co. v. Pacific Co., 312 U. S. 270;* and *Tennessee Coal Co. v. Muscoda Local, 321 U. S. 590.*

The District Court entered a declaratory judgment (R. 339-341), stating:

> "We are so satisfied from the facts that the action for a declaratory judgment is permitted that we shall not discuss the question, nor cite the jurisprudence" (R. 83).

But the Circuit Court reversed, remanded, and ordered a dismissal (R. 360) because it found that no "justiciable controversy" was alleged or proved (R. 360) "in light of the controlling authorities" (R. 358), principally *Brotherhood of Locomotive Engineers v. M.-K.-T. R. Co., 320 U. S. 323,* and *Switchmen's Union v. National Mediation, 320 U. S. 297.* As we have heretofore shown, the issues in those cases are in nowise comparable to the issues in this case and those decisions, therefore, do not support the conclusion of the Circuit Court that no justiciable controversy

has been alleged or proved in the instant case. The Circuit Court of Appeals for the Fourth Circuit made the same error in *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 140 F. 2d 35*, and this Court reversed, holding that "the Railway Labor Act itself does not exclude the petitioner's cause of action from the consideration of the federal courts", *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210, 213.*

With this element of the case removed, we need look only to the Declaratory Judgment Act, and the decisions of this Court construing it, to determine whether or not petitioners are entitled to a declaratory judgment. That Act reads in part as follows:

> "In cases of actual controversy * * * the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such" (Judicial Code, sec. 274d, as amended; 48 Stat. 955, 49 Stat. 1027; 28 U. S. C. A. sec. 400).

The term "actual controversy", as used in the Declaratory Judgment Act, has been thus defined by this Court.

Aetna Life Ins. Co. v. Haworth, 300 U. S. 227:

> "The Constitution limits the exercise of the judicial power to 'cases' and 'controversies.' 'The term "controversies," if distinguishable at all from "cases," is so in

that it is less comprehensive than the latter, and includes only suits of a civil nature.' Per Mr. Justice Field in In re Pacific Railway Comm'n, 32 Fed. 241, 255, citing Chisholm v. Georgia, 2 Dall. 419, 431, 432. See Muskrat v. United States, 219 U. S. 346, 356, 357; Old Colony Trust Co. v. Commissioner, 279 U. S. 716, 723, 724. The Declaratory Judgment Act of 1934, in its limitation to 'cases of actual controversy,' manifestly has regard to the constitutional provision and is operative only in respect to controversies which are such in the constitutional sense. The word 'actual' is one of emphasis rather than of definition. * * *" (pages 239-240).

* * * * *

"A 'controversy' in this sense must be one that is appropriate for judicial determination. Osborn v. United States Bank, 9 Wheat. 738, 819. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. United States v. Alaska S. S. Co., 253 U. S. 113, 116. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. South Spring Gold Co. v. Amador Gold Co., 145 U. S. 300, 301; Fairchild v. Hughes, 258 U. S. 126, 129; Massachusetts v. Mellon, 262 U. S. 447, 487, 488. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. * * * Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised * * *" (pages 240-241).

Maryland Casualty Co. v. Pacific Co., 312 U. S. 270:

> "The difference between an abstract question and a 'controversy' contemplated by the Declaratory Judgment Act is necessarily one of degree, and it would be difficult, if it would be possible, to fashion a precise test for determining in every case whether there is such a controversy. Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment" (page 273).

Without repeating, we respectfully submit that the summary and short statement of the matter involved on pages 2 to 12, inclusive, of the foregoing petition for a writ of certiorari clearly disclose an "actual controversy", as defined by this Court, and that petitioners are entitled to a declaratory judgment which the Circuit Court almost but did not quite grant when it declared:

> "The carriers are under a statutory duty to negotiate with the Brotherhood. Neither negotiation nor an agreement with them can therefore make the carriers liable" (R. 359).

If that is what Congress intended, then the Circuit Court should have said so in a judgment which would have been binding upon all the parties and which would have protected petitioners from the damage suits threatened by the

twenty-nine individual defendants. Instead of affording petitioners "relief against such peril and insecurity", *Altvater v. Freeman, 319 U. S. 359, 365*, the Circuit Court adds thereto by thus advising the twenty-nine individual defendants:

> "If, the negotition completed, any of the members have a just ground of complaint that the collective agreement is not binding on them for want of authority of the bargaining agent, it will not be binding on them or on the carriers, and they can, as Steele and Tunstall did, obtain relief from it" (R. 359).

It thus appears that the Circuit Court would have petitioners and the Brotherhood of Railroad Trainmen negotiate an agreement which inevitably would be subjected to attack in subsequent litigation because the District Court has already found that the order of the Board of Appeals of the Brotherhood of Railroad Trainmen (R. 185-194), under which the officers of the Brotherhood are proceeding, is null and void because the Board of Appeals, under the constitution of the Brotherhood, had no jurisdiction of the controversy (R. 332, 335, 337, 338); that the individual employees of The Texas and Pacific Railway Company, defendants below, "have been denied a right under the Constitution of the Brotherhood" (R. 338); and that the action taken by the Brotherhood of Railroad Trainmen, its of-

ficers, agents or representatives, "is contrary to and in violation of the constitution and by-laws of said Brotherhood and is null and void" (Judgment, R. 340). This course of procedure would deny the relief which "it was the function of the Declaratory Judgment Act to afford", *Altvater v. Freeman, 319 U. S. 359, 365* [citing *S. Rep. No. 1005, 73d Cong., 2d Sess., pp. 2-3;* and *Borchard, Declaratory Judgments (2d ed.) pp. 927, et seq.*] and it would frustrate the very purpose of the Act, which was intended to avoid a multiplicity of suits, *Maryland Casualty Co. v. Faulkner, 126 F. 2d 178*, "remove uncertainty and insecurity", "afford a speedy and inexpensive method of adjudication", *Aetna Casualty & Surety Co. v. Quarles, 92 F. 2d 321, 325*, "avoid accrual of avoidable damages", afford parties "an early adjudication without waiting" until their adversaries "should see fit to begin suit, after damage had accrued", *Milwaukee Gas Specialty Co. v. Mercoid Corporation, 104 F. 2d 589, 592;* and, according to the Circuit Court in another case, afford an employer the opportunity to establish the rights of its employees "without waiting to be sued for breach or for damages or for specific performance" and thus "stabilize an 'uncertain and disputed relation' ", *Oil Workers Inter. Union, etc. v. Texoma Nat. Gas Co., 146 F. 2d 62, 65*, certiorari denied, *325 U. S. 872*, rehearing denied, *325 U. S. 893*.

In the picturesque language of a proponent of the Declaratory Judgment Act, the Circuit Court would have the parties "take a step in the dark and then turn on the light" to see if they "have stepped in a hole", while the Act contemplates that the parties "turn on the light and then take the step", *Senate Report No. 1005* (to accompany S. 588), *73d Congress, 2d Session* (page 5).

Petitioners attempted to "turn on the light" by this action for a declaratory judgment which the Circuit Court erroneously refused to grant either against the Brotherhood of Railroad Trainmen and its Rapides Lodge No. 856, or against the twenty-nine individual defendants.

WHEREFORE, petitioners pray, as in their foregoing petition, that a writ of certiorari, issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record and proceedings of said Circuit Court in the case on its docket numbered 11663, entitled "Brotherhood of Railroad Trainmen, et al., Appellants, versus Texas & Pacific Railway Company, et al., Appellees", to the end that said cause may be reviewed and determined by this Court as provided by the Statutes of the United States; that the judgment of said Circuit Court be reversed; and for

such other and further relief as this Court may deem proper.

Dated June 14, 1947.

Respectfully submitted,

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